

Board of Selectmen

MEETING TUESDAYS AT 7-00 P.M. • UPPER TOWN HALL • 1 MAIN STREET • AYER, MASSACHUSETTS 01432

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Town Administrator
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September 4, 2008

Anne K. Quinlan, Esq., Acting Secretary
Surface Transportation Board
395 E. Street, S W
Washington, DC 20024

**RE: Response to Comments, Protests and Requests for Conditions
Finance Docket No. 35147
Norfolk Southern Railway Company, Pan Am Railways, Inc. et al.
Joint Operating Agreements – Pan Am Southern LLC**

Dear Secretary Quinlan:

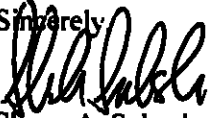
Please accept this correspondence further to comments submitted by this office and the Board of Health of the Town of Ayer

Whereas the applicant's filing includes proposed construction of a new auto-unloading facility on a Mass. Dept of Environmental Protection designated Zone II aquifer for the town of Ayer's Spectacle Pond wellfields, and to mitigate against the potential of a catastrophic event despoiling the Town's primary drinking water supply, the Town would propose the following conditions.

1. The STB require that an existing, vacant auto-unloading facility located outside of the Zone II aquifer be redeveloped in favor of the new facility, and
2. A full Environmental Assessment be required for this project, and
3. The applicants be required to allow the Town to install groundwater monitoring wells as detailed in the plan of GeoInsight dated July 30, 2007 and entitled "Spectacle Pond Wellfields Proposed Well Locations: Pan Am Property" which plan is incorporated as Exhibit B in this packet.

The above requests for condition supplement the prior filings of the Town in this matter.

Sincerely,


Shaun A. Suhoski
Town Administrator

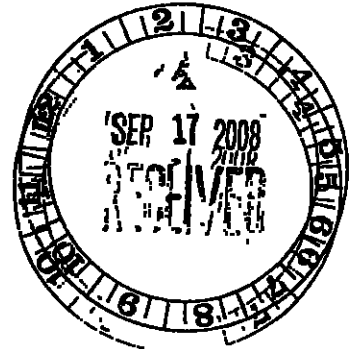
cc Board of Selectmen
DPW Superintendent
Conservation Commission
Water Dept Foreman
Board of Health
Parties of Record

ENTERED
Office of Recording

SEP 22 2008

Part of
Public Record

223651



TOWN OF AYER
BOARD OF HEALTH

TOWN HALL – 1 MAIN STREET – AYER, MASSACHUSETTS 01432 – (978) 772-8213



September 5, 2008

Ms. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024



**RE: Response to Comments, Protests and Requests for Conditions
Finance Docket No. 35147
Norfolk Southern Railway Company, Pan Am Railways, Inc. et al.
Joint Operating Agreements – Pan Am Southern LLC**

Dear Secretary Quinlan:

In accordance with the Board's decision served June 26, 2008 in the above matter, the Town of Ayer, Board of Health (BOH) hereby submits its comments concerning the above-referenced proposed transaction.

Based upon review of the Environmental Appendix filed in the above matter the BOH respectfully requests that further environmental review under the National Environmental Policy Act should be required due to potential impacts on **drinking water**.

The STB and project proponents should also be required to assess an alternative to the construction of a new auto unloading facility directly above the Town's **drinking water** supply aquifer in favor of reuse of an existing, vacant auto unloading facility that is proximate to the site but located outside of the Mass. Dept. of Environmental Protection's designated Zone II aquifer.

At minimum, the STB should mandate full compliance with all conditions incorporated in the Consent Decree dated July 24, 2003 (U.S. District Court – Massachusetts, C.A. No. 99-CV-12606 JLT) incorporated herein by reference as Exhibit A.

1. Drinking Water: Spectacle Pond Well Fields – Mass. DEP Zone II Aquifer

The filing indicates planned construction of a “new automotive facility” at the so-called San Vel site in Ayer. The proposed new facility would accommodate 810 vehicles on a Massachusetts Dept. of Environmental Protection designated Zone II aquifer.

This aquifer directly recharges the Town’s Spectacle Pond wellfield, a primary source of the Town’s public water system. The neighboring town of Littleton also has wellfields located within the zone of Spectacle Pond. A full environmental assessment should be required to ensure no negative impact to the **drinking water** supply for two municipalities. The BOH is extremely concerned that any size spill would be devastating to the Town and its residents and businesses throughout the Nashoba Valley.

Due to the fact that the Spectacle Pond wellfield is the primary source of **drinking water**, the BOH strongly urges the requirement of several monitoring wells to be installed on the property to mitigate potential impact to the Town’s Spectacle Pond Wells as proposed by GeoInsight, Inc., Environmental Engineers (Spectacle Pond Wellfield. Proposed Well Locations: Pan Am Property map) incorporated herein by reference as Exhibit B.

The proposed monitoring well locations would be installed and monitored by the Town as indicated by correspondence of the Town Administrator dated September 4, 2008 and incorporated herein as Exhibit C.

2. BOH Preference: Utilize Existing Auto Unloading Facility in Ayer/No New Build Scenario

The BOH recommends using the longstanding existing auto unloading facility which sits proximate to the proposed new facility but is located outside the Zone II aquifer. The STB and

project proponents should be required to analyze an option that would facilitate reuse of the existing facility in lieu of major construction of a new facility directly above the Town's drinking water supply.

In the event the conditions of this transaction are modified and could further adversely affect the Health and Welfare of the residents of the Town of Ayer, the Ayer Board of Health reserves its right to submit further comments at an appropriate time.

Respectfully submitted,
AYER BOARD OF HEALTH

BY 
Margaret M. Kidder, Chair, Ayer Board of Health

Dated: September 5, 2008

CERTIFICATE OF SERVICE

I, Michelle Carlisle, Administrative Assistant for the Town of Ayer, Board of Health, hereby certify that a copy of the response to comments of the Town of Ayer, Board of Health has been served this 5th day of September, 2008, by first class mail, postage pre-paid, on all parties of record in this proceeding as indicated on the attached Service List.

A handwritten signature in black ink that reads "Michelle Carlisle". The signature is written in a cursive style with a horizontal line underneath the name.

Michelle Carlisle, Administrative Assistant
Town of Ayer, Board of Health
1 Main Street
Ayer, MA 01432

EXHIBIT A

JUL 8 0 2003/1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C A No 99-CV-12606 JUL

Boston and Maine Corporation,
Springfield Terminal Railway Co.,
and Guilford Transportation Industries, Inc.,

Plaintiffs,

vs

Town of Ayer, Ayer Board of Selectman,
Ayer Planning Board, Paul D. Bresnahan,
Connie F. Sullivan, Robert J. Pera,
William Oelske, James Fay, James F. Williams,
James I. uchese, Thomas Gibbons, Lauri J. Rosas,
Margaret M. Kidder, and C. Jane Witherow,

Defendants

CONSENT DECREE

Upon the consent of all parties hereto, as evidenced by their signatures below, it is on the 28th day of July, 2003 ORDERED, ADJUDGED and DECREED

1 Boston and Maine Corporation, Springfield Terminal Railway Co., and Guilford Transportation Industries, Inc., (hereinafter collectively referred to as "Guilford") may proceed with the development, construction and operation of an automobile unloading facility at what is known as the San Vel site in Ayer, Massachusetts, subject to the conditions set forth in Exhibit A;

2 The parties agree that the issues relative to attorneys fees, as briefed, have been reserved to the First Circuit Court of Appeals and they shall not be prejudiced or

DO NOT
156

EXHIBIT A

- 1 In constructing an Auto Unloading Facility (hereinafter "the Facility") in Ayer, Massachusetts at what is known as the San Vel site, Guilford Transportation Industries Inc , Boston and Maine Corporation and Springfield Terminal Railway Company (hereinafter "Guilford") will install catch basins designed for a minimum infiltration rate of 5 inches per hour, with oil/gas separator hoods, consistent with design drawing Sheet 6 of 7 dated 1/11/2000, titled Willow Park, Ayer, Massachusetts, Miscellaneous Details, attached as Appendix A
- 2 Guilford will conduct test pits in the vicinity of the retention basins to confirm that the soils are consistent with test borings previously submitted to the Town of Ayer, see prior test results attached as Appendix B. The test pit results will be submitted to the Town of Ayer (hereinafter "Ayer") within one week of receipt by Guilford
- 3 Guilford will install a monitoring well network around the facility and will measure groundwater quality twice a year for as long as the facility is in operation and groundwater quantity twice a year for four years after completion of the facility. These test results will be submitted to Ayer within one week of receipt by Guilford
- 4 Guilford will comply with all applicable requirements of the Massachusetts Contingency Plan with regard to any releases of hazardous materials at the site
- 5 Guilford will develop a Stormwater Pollution Prevention Plan consistent with MPA Stormwater Regulations
- 6 -- Guilford agrees to continue to plow that portion of the emergency access road provided to Wagon Road residents that is on Guilford property
- 7 Guilford will continue to honor its agreements with Wagon Road residents regarding use of that private crossing and emergency access issues.
- 8 Guilford will comply with applicable building, electrical, fire and plumbing codes, except to the extent that such codes are applied in a discriminatory manner, unreasonably restrict the railroad from conducting its operations or unreasonably burdens interstate commerce
- 9 In operating the Facility, Guilford will comply with applicable federal noise control requirements

affected by the entry of this Consent Decree

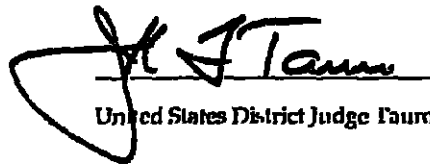
3 Except as provided in Exhibit A, the Town of Ayer (hereinafter referred to as "Ayer") has no authority to regulate the construction and operations of a railroad facility at the San Vel site. Any plans or test results provided to the Town in accordance with Exhibit A or under any other circumstances will be for informational purposes only with no right of the Town to approve, delay or otherwise regulate the construction or operation of a railroad facility at the San Vel site.

4 If the Town of Ayer believes that Guilford is failing to comply with this Consent Decree, Ayer's only recourse is to seek relief in the United States District Court for the District of Massachusetts or the Surface Transportation Board.

5 This court will retain jurisdiction to enforce the provisions of this decree.

6 Each individual consenting to the entry of this Decree on behalf of an entity represents by such consent that (a) such entity has duly authorized its consent and (b) such individual is duly authorized to consent on behalf of such entity.

7 To the extent that this Decree is inconsistent with the judgment entered in this action on March 22, 2002, this decree shall take precedence.


United States District Judge Tauro

- 10 Guilford will comply with applicable state best management practices during construction of the Facility
- 11 Guilford will provide Ayer with informational copies of construction plans and precautions being taken for the construction of the Facility not less than 60 days before initiation of construction of the Facility
- 12 Guilford will provide Ayer with informational copies of as-built plans for the Facility not more than 60 days after completion of construction of the Facility
- 13 Should Guilford develop the San Vel site for alternative uses, Guilford will provide Ayer with informational copies of construction plans and precautions being taken for any additions, improvements or changes to the San Vel site. Guilford will provide this information to Ayer no less than 60 days prior to initiation of construction and will comply with those conditions set forth herein that are material to the alternative uses. Ayer may object however Guilford does not agree that Ayer has the right to do so
- 14 Should Guilford develop the San Vel site for alternative uses, Guilford will provide Ayer with informational copies of as-built plans and precautions being taken for any additions, improvements or changes to the San Vel site. Guilford will provide this information to Ayer no more than 60 days after completion of construction
- 15 Guilford will install a septic system at an appropriate location at the site and may connect to the Town sewer system in the future. Any septic system must comply with Title 5 regulations
- 16 Guilford will install a geomembrane liner under the locomotive area. Testing of the integrity of the liner will be performed at Guilford's discretion. The test results will be provided to Ayer within one week of Guilford's receipt of the test results
- 17 Guilford will not remove snow from the site except for emergency situations

AYER 98 TEST PIT DATA			
TP	Gnd Surface EL	2/13/99	
		Depth to GWT	EL GWT
1	227.38	11.0	216.38
2	225.00	7.5	217.50
3	224.82	7.5	217.32
4	224.74	8.2	216.54
5	222.68	8.2	214.48
6	221.66	9.9	211.76
7	220.33	7.5	212.83
8	219.80	7.0	212.80
9	220.17	6.5	213.67
10	220.06	7.5	212.59
11	222.13	13.0	209.13
12	222.64	10.0	212.64
13	223.05	10.0	213.05
14	222.39	12.0	210.39
15	222.28	10.0	212.28

Exhibit B

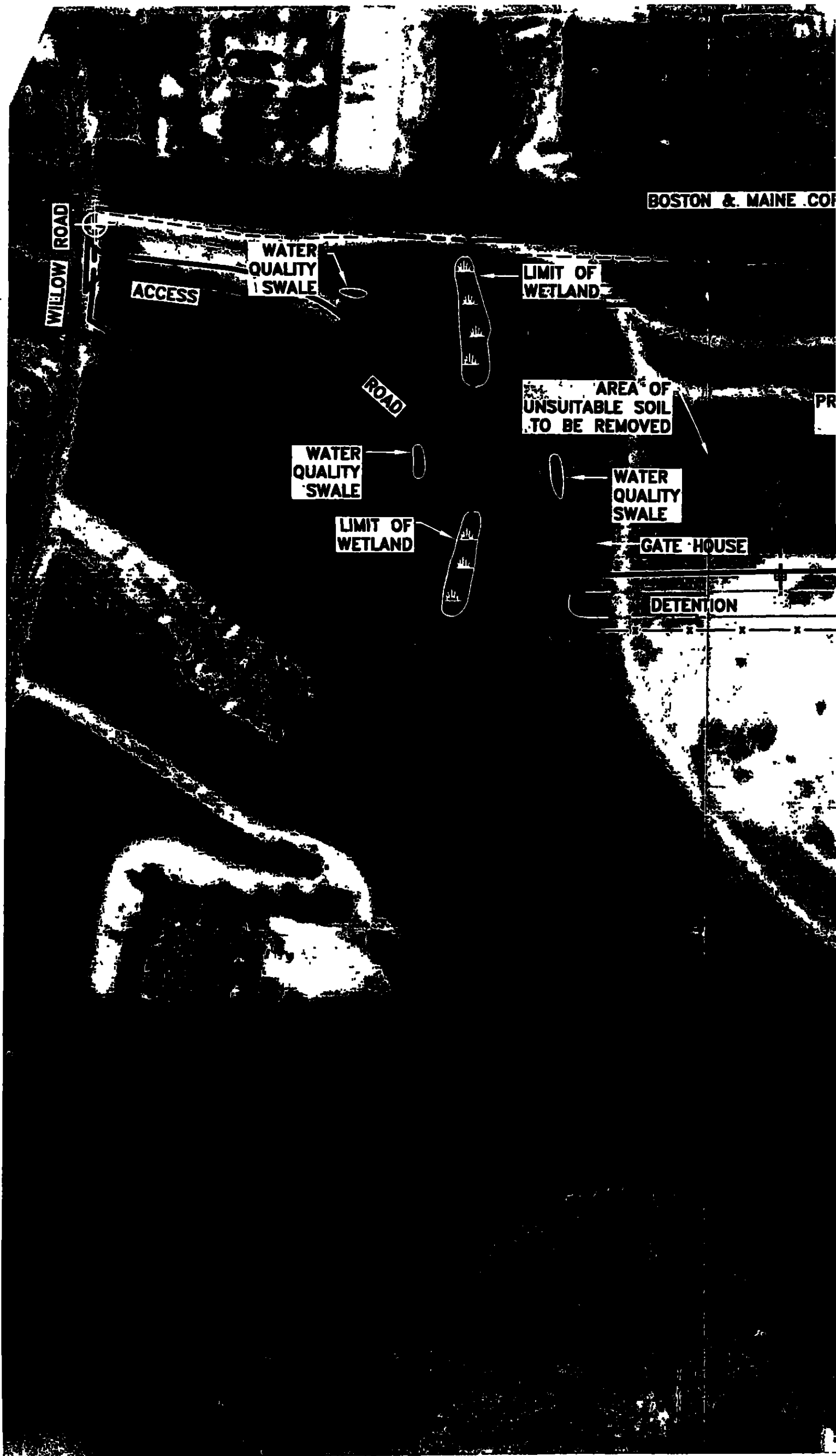
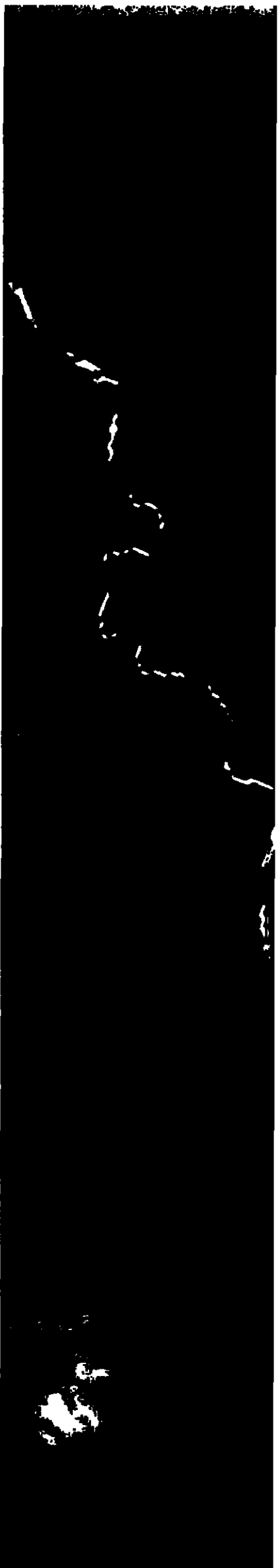


EXHIBIT B






D R A F T

NOTES:

1. THIS FIGURE WAS BASED UPON PLANS PREPARED BY CHASE INTERNATIONAL, INC., HYDE PARK, MA, TITLED "SITE PLAN FOR CONSTRUCTION WILLOW ROAD, AYER, MA." DATED JANUARY 5, 2007.

CLIENT:				TOWN OF AYER	
PROJECT:				SPECTACLE POND WELLFIELD	
TITLE:				PROPOSED WELL LOCATIONS PAN AM PROPERTY	
DESIGNED:	DRAWN:	CHECKED:	APPROVED:	<div> GeoInsight <i>Practical in Nature</i></div>	
RSE	NMT	KDT	KDT		
SCALE:	DATE:	FILE NO.:	PROJECT NO.:		
1" = 150'	7/30/07	5183D001	5183-000	FIGURE NO.: 1 A	

Board of Selectmen

EXHIBIT C

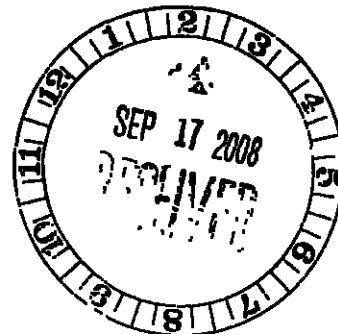
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Sincerely,


Shaun A. Suhoski
Town Administrator

cc: Board of Selectmen
DPW Superintendent
Conservation Commission
Water Dept. Foreman
Board of Health
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